

DECISION



**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D.C. 20548

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D. Hasterthor

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(45)

FILE: B-192760

DATE: February 9, 1979

MATTER OF: Murphy Machinery Company

DLG-856

DIGEST:

[Protest Concerning IFB Cancellation]

1. Cancellation of IFB after bid opening is proper where specification does not reflect Government's actual needs and thus issue of bid responsiveness under IFB need not be considered.
2. Provision inviting minor deviations from specification to some undefined extent should not be used as use does not permit free and equal competition.

Murphy Machinery Company (Murphy) has protested the rejection of its low bid under invitation for bids (IFB) No. 8000-78-13, issued by the National Park Service, Western Region, for the procurement of a rotary, self-propelled street sweeper, and the cancellation of the IFB for the declared purpose of revising the specifications for a new solicitation to obtain a different type of sweeper.

DLG 00957

The procurement activity determined that the Murphy bid was nonresponsive to the IFB. Murphy contends that its bid was responsive. However, regardless of the responsiveness of the bid, the record indicates that, after the receipt and evaluation of bids, the Park Service reviewed the IFB, reevaluated its needs and decided that for the park conditions the needs of the activity might better be met by procuring a vacuum-type sweeper. Therefore, the Park Service canceled the IFB under Federal Procurement Regulations (FPR) 1-2.404-1 (1964 ed. circ. 1) with the intention of preparing a new specification and readvertising.

The issue of whether the Murphy bid was responsive will not be addressed in view of the fact that the procurement activity has determined that the specification involved does not meet the actual needs of the Government and must, consequently, be revised. While Murphy protests the cancellation on the basis that the Park Service does

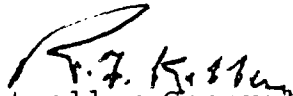
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not know what its needs are and that it evaluated its operational needs after the opening of bids, we note that FPR § 1-2.404-1 provides guidance as to when all bids may be rejected and an IFB canceled. Such action is proper and allowed even though the contracting officer determines after bid opening that the IFB specification does not satisfy the needs of the Government. Cottrell Engineering Corporation, B-183795, September 22, 1975, 75-2 CPD 165. While Murphy may disagree with the Park Service as to its needs, no evidence has been introduced to establish that the decision to cancel was clearly arbitrary or capricious. See Cottrell Engineering Corporation, supra.

Accordingly, the protest is denied.

Although we have declined to consider the responsiveness of the Murphy bid for the reason stated, we note that the IFB clause under which Murphy furnished the information that led to the determination of nonresponsiveness by the Park Service was one inviting bidders to offer minor deviations from the specification. We have stated that clauses allowing deviations from the specifications to some undefined extent have no place in formally advertised procurements since they do not generally permit free and equal competition. 52 Comp. Gen. 815 (1973); 51 id. 518 (1972); and 39 id. 570 (1960). Thus, the National Park Service should not include the provision in the readvertisement or any future IFB's, unless it lists the specific tolerances which will be considered to be minor. For example, if a smaller horsepower than that specified will be considered, the IFB should state the precise conditions under which it will be permitted. This should be done for each specification characteristic for which deviations will be accepted. We are drawing this matter to the attention of the Secretary of the Interior in a letter of today.


Deputy Comptroller General
of the United States